

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

S.K.,

Petitioner,

-against-

DANIEL F. MARTUSCELLO, III; DR.
CAROL MOORES; EILEEN GONZALEZ-
RUSSELL; MELINDA SAMUALSON,

Respondents.

24-CV-5390 (CS)

ORDER

CATHY SEIBEL, United States District Judge:

By Order to Show Cause dated August 26, 2024, (ECF No. 6), the Court ordered Petitioner to show cause why her petition for a writ of habeas corpus, (ECF No. 1), should not be recharacterized as a civil rights complaint under 42 U.S.C. § 1983. I have considered Petitioner's response, (ECF No. 7), and I remain convinced, for the reasons set forth in ECF No. 6, that this should be a conditions-of-confinement case under § 1983. Accordingly, Petitioner is ordered to replead her claims under § 1983 using the attached Amended Prisoner Civil Rights Complaint. She may have until October 23, 2024 for the Amended Complaint.

In addition, no later than October 16, 2024, Petitioner shall (for the reasons set forth in ECF No. 6) either prepay an additional \$400.00 toward the filing fee, or complete and submit the attached *in forma pauperis* ("IFP") application and prisoner authorization forms, authorizing her prison account to be debited in installments for the \$350.00 (for which she would be credited \$5.00 already paid). *See* 28 U.S.C. § 1915(b)(1)-(2). If Petitioner does not do either, the action will be recharacterized as a Section 1983 action and dismissed without prejudice for her failure to do so.

CONCLUSION

The Clerk of Court is directed to attach the following to this order before sending it to Petitioner: (1) an Amended Prisoner Civil Rights Complaint form; and (2) an IFP application and prisoner authorization form.

SO ORDERED.

Dated: September 23, 2024
White Plains, New York

A handwritten signature in black ink, reading "Cathy Seibel", is written over a horizontal line.

CATHY SEIBEL
United States District Judge